

**EXHIBIT 4  
TO  
DEVELOPMENT AGREEMENT**

**LEASE AGREEMENT**

**BETWEEN**

**THE CITY OF BLOOMINGTON AND HENNEPIN COUNTY**



LEASE AGREEMENT

BETWEEN

CITY OF BLOOMINGTON

And

COUNTY OF HENNEPIN

FOR PREMISES LOCATED AT:

1800 West Old Shakopee Road

Bloomington, Minnesota

LEASE AGREEMENT

This LEASE AGREEMENT (the "Lease") is made and entered into as of \_\_\_\_\_, 2017 (the "Execution Date"), between CITY OF BLOOMINGTON, a municipal corporation organized under the laws of Minnesota ("Landlord"), and COUNTY OF HENNEPIN, a public body politic and corporate organized under the laws of the State of Minnesota ("Tenant").

RECITALS:

- (a) At the Execution Date, Landlord owns the exclusive Fee Estate in the Premises and has the right to lease the Premises pursuant to the terms of this Lease.
- (b) Landlord desires to lease the Premises to Tenant, and Tenant desires to lease the Premises from Landlord.
- (c) The parties desire to enter into this Lease to set forth their rights and obligations to each other relating to the Premises.

NOW, THEREFORE, for good and valuable consideration, Landlord leases and demises the Premises to Tenant, and Tenant takes and hires the Premises from Landlord, subject only to Permitted Exceptions, for the Term, upon the terms and conditions of this Lease.

1. **Definitions**

The following definitions apply in this Lease.

"Base Rent" means the amount determined pursuant to Section 3.

"Building" means the building constructed on the Property as part of the Improvements.

“Building Equipment” means all fixtures incorporated in the Premises owned by Landlord or Tenant and used, useful, or necessary to operate the Improvements as such (including boilers; compactors; compressors; conduits; ducts; elevators; engines; equipment; escalators; fittings; heating, ventilating and air conditioning systems; machinery; and pipes) as opposed to operating any business in the Improvements, and accordingly Building Equipment does not include FF&E.

“Business Day” means any day other than a Saturday, Sunday, or holiday as defined in Minnesota Statutes, Section 645.44, subdivision 5.

“CAM” means payments by Tenant pursuant to Section 4(a) in lieu of common area maintenance costs incurred in the operation and maintenance of Civic Plaza parking, common areas and common utilities, including the costs to maintain, repair and replace such items.

“Casualty” means any damage or destruction of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, affecting any or all Improvements, whether or not insured or insurable.

“Casualty Termination” means a termination of this Lease because of a Substantial Casualty, when and as this Lease expressly allows such a termination. “Certificate of Occupancy” means a certification by the Government that a building or structure complies with applicable building codes and is in a condition suitable for occupancy.

“City Offices” means the approximately 9,290 GSF for City operations located on the first floor of the Building, including mechanical, storage, and unreserved space.

“Commencement Date” means the date on which a Certificate of Occupancy is issued.

“Condemnation” means: (a) any temporary or permanent taking of (or of the right to use or occupy) any of the Premises by condemnation, eminent domain, or any similar proceedings; or (b) any action by any Government not resulting in an actual transfer of an interest in (or of the right to use or occupy) any Premises but creating a right to compensation, such as a change in grade of any street upon which the Premises abut.

“Condemnation Award” means any award(s) paid or payable (whether or not in a separate award) to either party after the Commencement Date because of or as compensation for any Condemnation, including: (1) any award made for any improvements that are the subject of the Condemnation; (2) the full amount paid or payable by the condemning authority for the estate that is the subject of the Condemnation, as determined in Condemnation; (3) any interest on such award; and (4) any other sums payable on account of such Condemnation.

“Condemnation Effective Date” means, for any Condemnation, the first date when the condemning authority has acquired title to or possession of any portion of the Premises that is subject to the Condemnation.

“Court Facility” the building in which court is held serving the City of Bloomington, as well as other suburban communities and the Metropolitan Airports Commission, and providing such other levels of

judicial service consistent with the needs of the Fourth Judicial District of the State of Minnesota as an expansion of the existing Civic Plaza campus at 1800 West Old Shakopee Road, Bloomington, Minnesota and consisting of approximately 36,000 gross square feet ("GSF"), consisting of two stories and a 2,000 GSF mechanical penthouse for building support, as approved in the final construction plans, with the first floor providing approximately 17,000 GSF with approximately 9,290 GSF for City operations and the remainder for Court operations and building support. The second floor provides approximately 17,000 GSF for Court operations.

"Default" means any Monetary Default or Nonmonetary Default.

"Expiration Date" means the date when this Lease terminates or expires in accordance with its terms, whether on the Scheduled Expiration Date, by Landlord's exercise of remedies for an Event of Default, or otherwise.

"Fee Estate" means Landlord's fee estate in the Premises, including Landlord's reversionary interest in the Premises after the Expiration Date.

"FF&E" means all movable furniture, furnishings, equipment, and personal property of Tenant or anyone claiming through Tenant (excluding Building Equipment) that may be removed without material damage to the Premises and without adversely affecting: (a) the structural integrity of the Premises; (b) any electrical, plumbing, mechanical, or other system in the Premises; (c) the present or future operation of any such system; or (d) the present or future provision of any utility service to the Premises. FF&E includes items such as, furniture, movable equipment, telephone, telecommunications and facsimile transmission equipment, kitchen equipment, televisions, radios, and computer systems and peripherals.

"Government" means each and every governmental agency, authority, bureau, department, quasi-governmental body, or other entity or instrumentality having or claiming jurisdiction over the Premises (or any activity this Lease allows), including the United States government, the State and County governments and their subdivisions and municipalities, and all other applicable governmental agencies, authorities, and subdivisions thereof. "Government" shall also include any planning commission, board of standards and appeals, department of buildings, city council, zoning board of appeals, or similar body having or claiming jurisdiction over the Premises or any activities on or at the Premises.

"Improvements" means all buildings, structures and other improvements located on, under, in or attached to the Property, including the Court Facility and Building Equipment, but excluding FF&E.

"Indemnify" means, where this Lease states that any Indemnitor shall "Indemnify" any Indemnitee from, against, or for a particular matter (the "Indemnified Risk"), that the Indemnitor shall indemnify the Indemnitee and defend and hold the Indemnitee harmless from and against any and all loss, cost, claims, liability, penalties, judgments, damages, and other injury, detriment, or expense (including Legal Costs, interest and penalties) that the Indemnitee suffers or incurs: (a) from, as a result of, or on account of the Indemnified Risk; or (b) in enforcing the Indemnitor's indemnity. Indemnitor's counsel shall be subject to Indemnitee's approval, not to be unreasonably withheld. Any counsel satisfactory to Indemnitor's

insurance carrier shall be automatically deemed satisfactory. "Indemnification" shall have the correlative meaning.

"Indemnitee" means any party entitled to be indemnified under this Lease and its agents, directors, employees, and officers.

"Indemnitor" means a party that agrees to indemnify any other Person.

"Landlord's External Costs" means the out-of-pocket costs paid to third parties by Landlord including consulting fees, professional services and related costs and expenses which are incurred as a result of Tenant's use of the Premises or in response to a request from Tenant for Landlord's approval to a proposed document or action.

"Laws" means all laws, ordinances, requirements, orders, proclamations, directives, rules, and regulations of any Government affecting the Premises, this Lease, or any construction in any way, including any use, maintenance, taxation, operation, or occupancy of, or environmental conditions affecting, the Premises, or relating to any Real Estate Taxes, or otherwise relating to this Lease or any party's rights and remedies under this Lease, or any Transfer of any of the foregoing, whether in force at the Commencement Date or passed, enacted, or imposed at some later time, subject in all cases, however, to any applicable waiver, variance, or exemption.

"Lease Year" means: (a) with respect to the first Lease Year, that period commencing on the issuance of a Certificate of Occupancy for the Court Facility and ending on the last day of the period of 12 full calendar months later (plus a partial calendar month, if applicable); and (b) every subsequent period of twelve calendar months during the Term, provided, however, that the last Lease Year shall end on the Expiration Date.

"Leasehold Estate" means Tenant's leasehold estate, and all of Tenant's rights, privileges under this Lease, upon and subject to all the terms and conditions of this Lease, and any direct or indirect interest in such leasehold estate.

"Leasehold Impairment" means any of the following, whether resulting from any future agreement between Landlord and Tenant or from the unilateral action of either of them: (a) cancellation, termination, surrender, acceptance of surrender, waiver, abandonment, amendment, modification, severance, or rejection of this Lease, in whole or in part; (b) subordination of this Lease to any mortgage or other encumbrance on the Fee Estate; (c) Tenant's consent to: (i) any of the foregoing or (ii) any other matter of a material nature that requires Tenant's consent under this Lease.

"Legal Costs" of any Person means all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed for its Legal Costs), including reasonable attorneys' fees, court costs, and expenses.

"Loss" means any Casualty or Condemnation.

"Loss Proceeds" means Condemnation Award(s) and/or Property Insurance Proceeds.

“Modification” means any abandonment, amendment, cancellation, discharge, extension, modification, rejection, renewal, replacement, restatement, substitution, supplement, surrender, termination, or waiver of a specified agreement or document, or of any of its terms or provisions, or the acceptance of any cancellation, rejection, surrender, or termination of such agreement, document, or terms.

“Modify” means agree to, cause, make, or permit any Modification.

“Monetary Default” means Tenant’s failure to pay any CAM charges or other money (including insurance premiums) when and as this Lease requires.

“New Lease” means a new lease of the Premises, effective as of (or retroactively to) the Expiration Date of this Lease, for the remainder of the Term of this Lease, through and including the Scheduled Expiration Date (taking into account any Renewal Options already exercised), considered as if this Lease had not been terminated, with New Tenant, on all the same terms and provisions of this Lease, and in the same form as this Lease, except as this Lease otherwise expressly provides, whether entered into pursuant to this Lease or by agreement between Landlord and a New Tenant. Any New Lease shall include all rights, Options, and privileges of Tenant under this Lease, including any Renewal Options not yet exercised, but shall not include any Excluded Obligations. Any New Lease or a memorandum thereof shall be in recordable form.

“New Lease Delivery Date” means the date when Landlord and New Tenant enter into and deliver a New Lease.

“New Parking” means the parking to be constructed pursuant to the Parking Development Agreement, as that term is defined in the Development Agreement. A copy of the Parking Development Agreement is attached hereto as Exhibit B and incorporated herein by reference.

“Nonmonetary Default” means Tenant’s: (a) failure to comply with any affirmative or negative covenant or obligation in this Lease, except a Monetary Default; or (b) breach of any representation or warranty (as of the date made or deemed made).

“Notice” means any consent, demand, designation, election, notice, or request relating to this Lease, including any Notice of Default. Notices shall be delivered, and shall become effective, only in accordance with the “Notices” Article of this Lease.

“Notify” means give a Notice.

“Notice of Default” means any Notice claiming or giving Notice of a Default or alleged Default.

“Option” means the following rights of Tenant under this Lease, in each case to the extent (if any) this Lease provides for them: (1) any Renewal Option; (2) any option to terminate or cancel this Lease, in whole or in part; (3) any other discretionary right or privilege of Tenant similar to any of the foregoing.

“Permitted Exceptions” means only: (1) the recorded title exceptions affecting the Fee Estate and prior to this Lease as of the Execution Date; (2) any title exceptions (including Subleases) caused by Tenant’s acts

or omissions, consented to in writing or requested by Tenant, or resulting from Tenant's Default; (3) this Lease and its terms and provisions; and (4) any state of facts an accurate survey would show.

"Person" means any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind. (This does not limit any Transfer restriction.)

"Premises" means the approximately 7,710 GSF located on the first floor of the Building and the approximately 17,000 GSF located on the second floor of the Building and a 2,000 GSF mechanical penthouse for building support, as approved in the final construction plans, which comprise the Court Facility, together with the non-exclusive use in common with others entitled to use same: conference rooms, elevators, corridors, sidewalks, walkways, entryways, parking lots, and such other common areas, facilities and improvements designated for common use and benefit.

"Prohibited Lien" means any mechanic's, vendor's, laborer's, or material supplier's statutory lien or other similar lien arising from work, labor, services, equipment, or materials supplied, or claimed to have been supplied, to Tenant (or anyone claiming through Tenant), but only if such lien attaches (or may attach upon termination of this Lease) to the Fee Estate. An Equipment Lien is not a Prohibited Lien.

"Property" means a land area of approximately 20,000 square feet on which a Court Facility and City Offices will be constructed, as depicted in Exhibit A.

"Property Insurance" means insurance providing coverage for the Building or the Premises and the Improvements against loss, damage, or destruction by fire and other hazards encompassed under the broadest form of property insurance coverage then customarily used for like properties in the County (except earthquake, war risk, or terrorism coverage) from time to time during the Term, in an amount equal to 100% of the replacement value (without deduction for depreciation) of the Improvements (excluding excavations and foundations) and in any event sufficient to avoid co-insurance, with "ordinance or law" coverage. To the extent customary for like properties in the County at the time, such insurance shall include coverage for explosion of steam and pressure boilers and similar apparatus if located on the Premises; an increased cost of construction" endorsement; and an endorsement covering demolition and cost of debris removal.

"Property Insurance Proceeds" means net proceeds (after reasonable costs of adjustment and collection, including Legal Costs) of Property Insurance, when and as received by Landlord or Tenant.

"Renewal Options" means those options for Tenant to extend the Term of the Lease as described in Section 2(c).

"Renewal Terms" means those additional periods that extend the Term in which Tenant has exercised its Renewal Options, as described in Section 2(c).

"Restoration" means, after a Loss, the alteration, clearing, rebuilding, reconstruction, repair, replacement, restoration, and safeguarding of the damaged or remaining improvements specified, or if not specified, the Improvements, substantially consistent with their condition before the Loss, subject to such additional



construction as the pertinent party shall perform in conformity with this Lease, and subject to any changes to the extent that changes in Law would require modification or limitation of the foregoing.

“Restoration Funds” means any Loss Proceeds (and deposits by Tenant) to be applied to Restoration.

“Restore” means accomplish a Restoration.

“Scheduled Expiration Date” means 11:59 p.m. on the last day of the Term.

“State” means the State of Minnesota.

“Structure” of the Premises means only the concrete floors, footings, foundation, load-bearing walls, roof, roof support system, and structural steel or other structural support system of the Premises.

“Substantial Alteration” of the Premises means any alteration of the Structure or the removal, movement or replacement of walls, floors, ceilings, roof, windows or any structural component of the Premises, but not including the removal, movement or replacement of FF & E.

“Substantial Casualty” means a Casualty that: (a) renders 25% or more of the Premises not capable of being used or occupied; (b) occurs less than five (5) years before the end of the Term and renders 10% or more of the Premises not capable of being used or occupied; (c) requires Restoration whose cost Tenant reasonably estimates in writing would exceed \$10,000,000 times the CPI Adjustment Factor; or (d) pursuant to Law, prevents the Premises from being Restored to the same condition, and for the same use(s), as before the Casualty.

“Substantial Condemnation” means any Condemnation that (a) takes the entire Premises; (b) renders the remaining Premises Uneconomic; or (c) occurs less than five (5) years before the end of the Term.

“Temporary Condemnation” means a Condemnation of the temporary right to use or occupy all or part of the Premises.

“Term” means the period of thirty (30) years beginning on the Commencement Date and continuing through the Scheduled Expiration Date, as it may be extended in accordance with the terms of this Lease, unless sooner terminated as provided herein.

“Transfer” of any property means any of the following, whether by operation of law or otherwise, whether voluntary or involuntary, and whether direct or indirect: (a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale, or other transfer, whether direct or indirect, of all or any part of such property, or of any legal, beneficial, or equitable interest or estate in such property or any part of it, including the grant of any easement, lien, or other encumbrance. “Transferor” and “Transferee” shall have correlative meanings.

“Unavoidable Delay” means delay in performing any obligation under this Lease (except payment of money) arising from or on account of any cause whatsoever beyond the obligor’s reasonable control, despite such obligor’s reasonable diligent efforts, including wars, terrorism, explosion, floods, labor disputes, unusual delay in transportation, epidemics, earthquakes, adverse weather conditions not

reasonably anticipated, governmental action or inaction not reasonably anticipated. Unavoidable Delay shall exclude delay caused by the obligor's financial condition, illiquidity, or insolvency. Any obligor claiming Unavoidable Delay shall notify the obligee: (a) within 30 days after such obligor knows of any such Unavoidable Delay; and (b) within 10 days after such Unavoidable Delay ceases to exist. To be effective, any such Notice must describe the Unavoidable Delay in reasonable detail. Where this Lease states that performance of any obligation is subject to Unavoidable Delay(s) or words of similar import, such Unavoidable Delay(s) shall extend the time for such performance only by the number of days by which such Unavoidable Delay(s) actually delayed such performance.

"Uneconomic" means that the Premises or any substantial part of the Premises: (1) cannot be used for its previously intended purpose; (2) is subject to material and adverse impairment of access to, parking facilities benefiting, or any material service(s) necessary or appropriate for economic operation; or (3) cannot reasonably be operated as a Court Facility, whether in a manner substantially consistent with past practice or on a scale that is smaller but nevertheless operational and reasonably feasible.

"Waiver of Subrogation" means a provision in, or endorsement to, any property insurance policy, by which the carrier agrees to waive rights of recovery by way of subrogation against either party to this Lease for any loss such policy covers or permits waiver by the insured of claims on account of such loss.

**2. Lease Term**

a. Lease of Premises. Landlord hereby leases the Premises to Tenant for the Term, subject to and upon the terms and conditions of this Lease.

b. Initial Term. The initial Term of this Lease shall be thirty (30) years: (a) commencing on the date on which a Certificate of Occupancy is issued; and (b) continuing until the Scheduled Expiration Date, unless terminated sooner under the terms of this Lease.

c. Option to Extend. Landlord hereby grants to Tenant the option to extend the Term for up to four (4) additional periods of five (5) years each, subject to and upon all of the terms and conditions of this Lease except as follows:

(1) Tenant shall give Notice of exercise of its option to extend not later than one (1) year prior to the expiration of the then-current Term;

(2) Tenant's right to extend is conditioned upon Tenant using the Premises for a Court Facility.

**3. Rent – None.**

**4. Additional Payments by Tenant**

a. Services, Maintenance and Utilities Provided by Landlord. Commencing on the date a Certificate of Occupancy is issued for the Court Facility, Tenant shall pay for utilities, maintenance and other building services that are provided by the City, as set forth in an Operating Agreement to be negotiated by the parties. The Operating Agreement defines the utilities, maintenance and services included and the basis for arriving at costs. It separately identifies and describes those services that are provided directly

by the Tenant and / or their service vendors. Tenant shall pay these costs in equal monthly installments in advance on the first day of each month of the following amount: \$10.00 per square foot. Two months after the close of each budget year, City will true accounts for services with actual costs for the year and an adjustment (annual payment or credit) will be made for all services provided. If actual costs are higher than \$10.00 per square foot, Tenant shall make any additional payment to Landlord in an amount equal to the difference between the paid amount and the actual cost for the preceding year in question. Approximately four months prior to the start of the next budget year the City and County will agree to adjustments in services and the allocation of costs and identify the adjusted monthly payment for the new budget year.

b. Utilities. Tenant shall pay City for all fuel, gas, light, power, water, sewage, garbage disposal, telephone, cable, security systems, internet utilities and other utility charges, and the expenses of maintenance, use, and service in connection with the foregoing in accordance with the Operating Agreement for the Premises during the Term. Landlord shall have absolutely no liability or responsibility for the foregoing. County will pay directly for installation as part of the construction project, including separate metering where applicable.

c. Insurance. Commencing on the date a Certificate of Occupancy is issued for the Court Facility, Tenant shall pay on an annual basis its pro rata share of the cost of Property Insurance obtained by Landlord. Tenant shall be solely responsible for insuring all of its own FF&E and other personal property placed on or in the Premises at its sole cost.

d. Capital Improvements & Asset Preservation. County will pay City 100% for direct costs associated with capital improvements & asset preservation required for Court Facility space. County will pay City pro-rata share for common space / shared benefit capital improvements & asset preservation work. City will develop five-year CIP and work with County to identify planned improvements / costs for each budget year in order for County to include a budget for their share in County's capital budget program.

e. Parking. In the event that additional parking is required to be constructed on the contiguous or adjacent property of the Landlord in accordance with the terms of the Parking Development Agreement Tenant must timely pay its share of the costs of that construction under the terms of the Parking Development Agreement. Subsequent to start of use, County will pay its pro-rata share for annual maintenance and repair costs.

## 5. Use

a. Permitted Use. Tenant may use the Premises for a Court Facility and ancillary functions and for no other purpose. Tenant shall not use, operate, lease, license or sublet any portion of the Improvements for any other purpose. Tenant may discontinue operation of the Premises or any portion thereof at any time or from time to time. Tenant's use of the Premises must not result in any Landlord's External Costs without the Landlord's prior written approval of the use and resulting Landlord's External Costs.

b. **Exclusive Control.** Tenant shall have exclusive control, possession, occupancy, use, and day to day management of the Court Facility on the Premises. Subject only to receipt of all approvals from Government therefor, Tenant shall have the exclusive right to install signage on or at the Premises which is substantially consistent with Tenant's brand signage as the same may exist from time to time during the Lease Term or to Transfer the right to install such signage during the Term. Tenant may install within the Premises, any signage required by Tenant in its sole discretion, subject only, to the extent applicable, receipt of governmental approvals therefor.

c. **Management Fees.** Tenant shall timely pay and discharge all fees, costs, and expenses related to or arising from the operation of Tenant's Court Facility on the Premises and the provision of services to the Premises.

d. **Maintenance and Repair.** Tenant, at its own expense, shall maintain the Court Facility on the Premises at all times in as good condition and repair of equal quality with the original work and condition, ordinary wear and tear excepted, and in a clean, sanitary, and safe condition in accordance with all applicable laws, including without limitation, all plumbing, sewage, ventilating, and electrical systems serving the Court Facility on the Premises, doors, windows, floors, and floor coverings, interior walls and all interior painting and decorating, and all equipment, facilities, fixtures, and appurtenances. The Tenant shall permit no waste, damage or injury to the Premises. Tenant will pay City for all maintenance and repair work within Court Facility premises per Section 4 above at direct cost.

e. **Tenant's Improvements.** Tenant shall not make and shall not commence any Substantial Alteration that has not been previously approved by the Landlord. If any Substantial Alteration is made or commenced without the Landlord's consent, and the Landlord does not give subsequent approval thereof, the Tenant shall, upon receiving written notice from the Landlord, restore that portion of the Premises affected by the Substantial Alteration to its preexisting condition at Tenant's sole expense.

f. **Change in Use.** Any significant change in the nature and use of the premises as a Court Facility, including without limitation: the addition of felony court appearances; an increase of fifty percent (50%) or more in the number of cases handled during peak periods; and the holding of court outside of the hours of 7:00 a.m. through 7:00 p.m., will require at least 180 days' written notice to the City, as well as a preliminary traffic and parking study conducted by an outside expert at the shared expense of the parties.

## **6. Compliance**

a. **Generally.** Tenant shall during the Term, at Tenant's expense, in all material respects, subject to Tenant's right of Contest: (1) comply with all Laws; (2) procure and comply with all approvals required by Law; (3) perform all of Tenant's obligations under this Lease; and (4) perform the Tenant's obligations under the Parking Development Agreement.

b. **Copies of Notices.** Landlord shall promptly give Tenant a copy of any notice of any kind regarding the Premises and any notice of nonrenewal or threatened nonrenewal of any approval that Landlord receives from any Government, utility company, insurance carrier, or insurance rating bureau.

**7. Prohibited Liens**

a. Tenant's Covenant. If a Prohibited Lien is filed then Tenant shall, within 30 days after receiving Notice from Landlord of such filing (but in any case within 15 days after Landlord Notifies Tenant of commencement of foreclosure proceedings), commence appropriate action to cause such Prohibited Lien to be paid, discharged, bonded, or cleared from title. Tenant shall thereafter prosecute such action with reasonable diligence and continuity. If Landlord receives notice of any such filing, then Landlord shall promptly Notify Tenant. Nothing in this Lease shall be construed to: (1) limit Tenant's right of Contest; or (2) obligate Tenant regarding any lien that results from any act or omission by Landlord.

b. Protection of Landlord. NOTICE IS HEREBY GIVEN THAT LANDLORD SHALL NOT BE LIABLE FOR ANY LABOR OR MATERIALS FURNISHED OR TO BE FURNISHED TO TENANT UPON CREDIT, AND THAT NO MECHANIC'S OR OTHER LIEN FOR ANY SUCH LABOR OR MATERIALS SHALL ATTACH TO OR AFFECT THE FEE ESTATE. NOTHING IN THIS LEASE SHALL BE DEEMED OR CONSTRUED IN ANY WAY TO CONSTITUTE LANDLORD'S CONSENT OR REQUEST, EXPRESS OR IMPLIED, BY INFERENCE OR OTHERWISE, TO ANY CONTRACTOR, SUBCONTRACTOR, LABORER, EQUIPMENT OR MATERIAL SUPPLIER FOR THE PERFORMANCE OF ANY LABOR OR THE FURNISHING OF ANY MATERIALS OR EQUIPMENT FOR ANY CONSTRUCTION, NOR AS GIVING TENANT ANY RIGHT, POWER OR AUTHORITY TO CONTRACT FOR, OR PERMIT THE RENDERING OF, ANY SERVICES, OR THE FURNISHING OF ANY MATERIALS THAT WOULD GIVE RISE TO THE FILING OF ANY LIENS AGAINST THE FEE ESTATE. TENANT SHALL INDEMNIFY LANDLORD AGAINST ANY CONSTRUCTION UNDERTAKEN BY TENANT OR ANYONE CLAIMING THROUGH TENANT, AND AGAINST ALL PROHIBITED LIENS.

**8. Indemnification; Liability of Landlord**

a. Obligations. Landlord and Tenant shall each Indemnify the other against any: (1) wrongful act, wrongful omission, or negligence of the Indemnitor (and anyone claiming by or through the Indemnitor) or its or their partners, members, directors, officers, or employees; (2) breach or default by the Indemnitor under this Lease; or (3) breach of any representation or warranty Indemnitor makes in this Lease. Notwithstanding anything to the contrary in this Lease, no Indemnitor shall be required to indemnify any Indemnatee regarding the Indemnatee's intentional acts or omissions or negligence.

b. Liability of Landlord. During the Term: (1) Tenant is and shall be in exclusive control and possession of the Court Facility on the Premises; and (2) Landlord shall not be liable for any injury or damage to any FF & E of Tenant or any other property of Tenant or any other Person or to any person occurring on or about the Court Facility on the Premises, except to the extent caused by Landlord's intentional act, omission, or negligence. Landlord's right to enter and inspect the Court Facility on the Premises is intended solely to allow Landlord to ascertain whether Tenant is complying with this Lease and (to the extent this Lease allows) to cure any Default. Such provisions shall not impose upon Landlord any liability to third parties. Nothing in this Lease shall be construed to exculpate, relieve, or Indemnify Landlord from or against any liability of Landlord to third parties existing at or before the Commencement Date; or arising from Landlord's intentional acts or omissions or negligence.

c. **Indemnification Procedures.** Wherever this Lease requires any Indemnitor to indemnify any Indemnatee:

(1) **Prompt Notice.** Indemnatee shall promptly Notify Indemnitor of any claim subject to Indemnification. To the extent, and only to the extent, that Indemnatee fails to give prompt Notice and such failure materially prejudices Indemnitor, Indemnitor shall be relieved of its indemnity obligations for such claim.

(2) **Selection of Counsel.** Indemnitor shall select counsel reasonably acceptable to Indemnatee. Counsel to Indemnitor's insurance carrier shall be deemed satisfactory. Even though Indemnitor shall defend the action, Indemnatee may, at its option and its own expense, engage separate counsel to advise it regarding the claim and its defense. Such counsel may attend all proceedings and meetings. Indemnitor's counsel shall reasonably consult with Indemnatee's counsel. Indemnitor and its counsel shall, however, fully control the defense.

(3) **Cooperation.** Indemnatee shall reasonably cooperate with Indemnitor's defense, provided Indemnitor reimburses Indemnatee's actual reasonable out of pocket expenses (including Legal Costs) of such cooperation.

(4) **Settlement.** Indemnitor may, with Indemnatee's consent, not to be unreasonably withheld, settle the claim. Indemnatee's consent shall not be required for any settlement by which: (w) Indemnitor procures (by payment, settlement, or otherwise) a release of Indemnatee by which Indemnatee need not make any payment to the claimant; (x) neither Indemnatee nor Indemnitor on behalf of Indemnatee admits liability; (y) the continued effectiveness of this Lease is not jeopardized in any way; and (z) Indemnatee's interest in the Premises is not jeopardized in any way.

(5) **Insurance Proceeds.** Indemnitor's obligations shall be reduced by net insurance proceeds Indemnatee actually receives for the matter giving rise to Indemnification.

## **9. Right of Contest**

a. **Tenant's Right; Contest Conditions.** Tenant shall have the exclusive right to contest, at its sole cost, by appropriate legal proceedings diligently conducted in good faith, the amount or validity of any Law or its application to the Premises; the terms or conditions of, or requirements for, any approval; or the validity or merit of any claim against which this Lease requires Tenant to Indemnify Landlord (any of the foregoing, a "Contest"). Tenant may defer payment or performance of the contested obligation pending outcome of the Contest, provided that Tenant causes the following conditions (collectively, the "Contest Conditions") to remain satisfied (and any dispute about Tenant's satisfaction of the Contest Conditions shall be resolved by Arbitration):

(1) **No Criminal Act.** Such deferral or noncompliance shall not constitute a criminal act by Landlord or subject Landlord to a material risk of any fine or penalty, except civil penalties for which Tenant has given Landlord a bond, letter of credit, or other security reasonably satisfactory to Landlord (the "Contest Security") in an amount equal to the reasonably estimated amount of such civil penalties.

(2) No Liability. Such deferral or noncompliance creates no material risk of a lien, charge, or other liability of any kind against the Fee Estate, unless Tenant has given Landlord Contest Security equal to the reasonably estimated amount of such lien, charge, or other liability.

(3) No Cost to Landlord. Such Contest shall be without cost, liability, or expense to Landlord.

(4) Diligence. Tenant shall prosecute such Contest with reasonable diligence and in good faith.

(5) No Event of Default. No Uncured Event of Default shall exist under this Lease at the time of such Contest.

(6) Named Parties. If Landlord has been named as a party in any action, then Tenant shall cause Landlord to be removed as such party and Tenant substituted in Landlord's place, if permissible under the circumstances.

b. Landlord Obligations and Protections. Landlord need not join in any Contest unless (1) Tenant has complied with the Contest Conditions; and (2) such Contest must be initiated or prosecuted in Landlord's name. In such case, Landlord shall cooperate, as Tenant reasonably requests, to permit the Contest to be prosecuted in Landlord's name. Landlord shall give Tenant any documents, deliveries, and information in Landlord's control and reasonably necessary for Tenant to prosecute its Contest. Landlord shall otherwise assist Tenant in such Contest as Tenant reasonably requires. Tenant shall pay all reasonable costs and expenses, including Legal Costs, of any Contest. Tenant shall, at Landlord's request, advance (when Landlord incurs them) such reasonable costs and expenses as Landlord incurs or reasonably anticipates incurring, for Tenant's Contest and Landlord's assistance with such Contest.

#### 10. Insurance

a. Landlord to Insure. Landlord shall through the balance of the Term, maintain Property Insurance covering the Improvements and Building Equipment, but not including Tenant's FF&E or other personal property placed or kept on the Premises

b. Nature of Insurance Program.

All insurance policies this Lease requires Landlord to obtain shall be issued by the Landlord's existing carrier, the League of Minnesota Cities Insurance Trust, or such other insurance carrier as the Landlord may select. Landlord may provide any insurance under a "blanket" or "umbrella" insurance policy, provided that (i) such policy or a certificate of such policy shall specify an amount not less than \$1,500,000 in total insurance; and (ii) such policy otherwise complies with this Lease.

c. Policy Requirements and Endorsements. All insurance policies this Lease requires Landlord to obtain shall contain (by endorsement or otherwise) the following provisions:

(1) Insureds. Property Insurance policies shall name Tenant and Landlord as loss payees as their interest may appear. Notwithstanding anything to the contrary in this paragraph, all Property Insurance Proceeds shall be paid and applied as this Lease provides.

(2) Primary Coverage. All policies shall be written as primary policies not contributing to or in excess of any coverage that Landlord may carry when Tenant is required to indemnify under the terms of this Lease.

(3) Notice to Tenant. The insurance carrier shall undertake to give Landlord 30 days' prior Notice of cancellation, who will upon receipt give notice to Tenant, except for nonpayment of premiums, provided that failure to give such Notice shall not adversely affect the rights or increase the obligations of the insurance carrier.

(4) Deductible. Each party shall be responsible for payment of any deductible on any insurance policies it obtains.

d. Deliveries to Tenant. No later than 10 days before any Property Insurance expires or is cancelled, Landlord shall deliver to Tenant certificates of insurance evidencing Landlord's maintenance of all Property Insurance this Lease requires, in each case providing coverage for at least one year from the date delivered. In the event of any dispute regarding Landlord's compliance with the insurance requirements of this Lease, Landlord may at Landlord's option obtain a certificate from a reputable insurance broker confirming such compliance. Such certificate shall be dispositive.

e. Waiver of Certain Claims. To the extent that Landlord or Tenant purchases any policy of property insurance, the party purchasing such insurance (the "Insurance Purchaser") shall attempt to cause the insurance carrier to agree to a Waiver of Subrogation, if not already in the policy. If any insurance policy cannot be obtained with a Waiver of Subrogation, or a Waiver of Subrogation is obtainable only by paying an additional premium, then the Insurance Purchaser shall so notify the other party. The other party shall then have 10 Business Days after receipt of such Notice either to (1) direct the Insurance Purchaser to place such insurance with a company reasonably satisfactory to the other party and willing to issue the insurance with a Waiver of Subrogation at no greater or additional cost; or (2) agree to pay the additional premium if such a policy can be obtained only at additional cost. To the extent that the parties actually obtain insurance with a Waiver of Subrogation, then notwithstanding anything to the contrary in this Lease, the parties release each other, and their respective authorized representatives, from any claims for damage to any person or the Premises that are caused by or result from risks insured against under such insurance policies, however such losses may be caused.

f. No Representation. Neither party makes any representation that the limits the scope or forms of insurance coverage this Lease requires are adequate or sufficient.

#### 11. Losses and Loss Proceeds

a. Notice. If either party becomes aware of any Casualty or any actual, threatened, or contemplated Condemnation, then such party shall promptly notify the other.

b. Effect of Casualty. If any Casualty occurs, then: (1) unless there is a Casualty Termination, (i) this Lease shall not terminate or be impaired; (ii) Tenant shall Restore the Improvements with reasonable promptness; and (iii) Landlord shall Restore or cause to be Restored, with reasonable promptness, the surrounding improvements.



c. **Adjustment of Claims; Use of Property Insurance Proceeds.** Landlord shall have the sole right and authority to adjust any insurance claim relating to the Improvements; provided that Landlord consult with Tenant during the claim adjustment process. Property Insurance Proceeds shall be disbursed to Landlord, to be held in trust to be applied for Restoration provided that Restoration Funds are sufficient to Restore. In the event Tenant has a claim against its own insurance carrier, the provisions of this Section 11(c) shall not apply.

d. **Substantial Condemnation.** If a Substantial Condemnation occurs, then either Landlord or Tenant may terminate this Lease (except as it relates to allocation of the Condemnation Award) as of the Condemnation Effective Date. Landlord shall not settle or compromise any Condemnation Award without consent by Tenant. The Condemnation Award shall be allocated without duplication, in the following order:

(1) **Costs and Expenses.** To reimburse Landlord and Tenant for Landlord's and Tenant's actual costs and expenses, including Legal Costs, incurred in the Substantial Condemnation and determining and collecting the Condemnation Award.

(3) **Tenant's Claim.** Tenant shall receive such portion of the Condemnation Award as shall equal the Market Value of the Leasehold Estate at the Condemnation Effective Date.

(4) **Landlord's Claim.** Landlord shall receive such portion of the Condemnation Award as shall equal the Market Value of the Fee Estate, at the Condemnation Effective Date.

(5) **Residual Claim.** Landlord shall receive the entire remaining Condemnation Award.

e. **Insubstantial Condemnation.** If an Insubstantial Condemnation occurs, then any Condemnation Award shall be applied first for Restoration in the same manner as Property Insurance Proceeds. Tenant shall Restore in the same manner as Restoration upon Casualty. Any Condemnation Award remaining after Restoration shall be applied in the same manner as a Condemnation Award from an Immaterial Loss.

f. **Immaterial Loss.** If an Immaterial Loss from a Condemnation occurs, then Tenant shall receive any Condemnation Award in trust to be applied first to Restoration. Tenant shall Restore in accordance with this Lease. After Restoration, Landlord shall receive any remaining Condemnation Award.

g. **Continuation of Lease.** Except as this Lease expressly provides, this Lease shall not terminate, be forfeited, or be affected in any other manner, and Tenant waives any right to quit or surrender the Premises or any part of the Premises, because of any Loss or any resulting untenability. Unless and until this Lease has been validly terminated, Tenant's obligations under this Lease shall continue unabated.

h. **Disputes.** Any dispute about a Loss (including its characterization), Restoration, timing of Restoration, Loss Proceeds, Restoration Funds, or the use of such proceeds or funds shall be resolved by Arbitration.

12. **Representations and Warranties**

a. **Landlord's Representations and Warranties.**

Landlord represents and warrants to Tenant that the following facts and conditions exist and are true as of the Execution Date.

(1) **Due Authorization and Execution.** Landlord has full right, title, authority, and capacity to execute and perform this Lease and any other agreements and documents to which Landlord is a party and referred to or required by this Lease (collectively, the "Lease-Related Documents"); the execution and delivery of the Lease-Related Documents have been duly authorized by all requisite actions of Landlord; the Lease-Related Documents constitute valid, binding, and enforceable obligations of Landlord; and neither the execution of the Lease-Related Documents nor the consummation of the transactions they contemplate violates any agreement, contract, or other restriction to which Landlord is a party or is bound. The warranties in this paragraph shall continue to apply in full force and effect throughout the Term as if made continuously during the Term.

(2) **No Litigation.** There is no existing or, to Landlord's knowledge, pending or threatened litigation, suit, action, or proceeding before any court or administrative agency affecting Landlord, any constituent entity or individual of Landlord, or the Premises that would, if adversely determined, materially adversely affect Landlord, the Premises, this Lease, the Leasehold Estate, or Tenant's ability to develop and operate the Premises for a Court Facility.

(3) **No Pending Condemnation.** There is no existing or, to Landlord's knowledge, pending or threatened Condemnation affecting any portion of the Premises or any pending public improvements in, about, outside, or appurtenant to the Premises that will materially adversely affect the use and operation of the Premises as a Court Facility, the value of the Premises, or access to the Premises or that will create additional cost to any owner or Tenant of the Premises by means of special assessments or otherwise.

(4) **No Pending Construction or Liens.** Landlord is not a party to any contract for any construction. No Person has the right to claim any mechanic's or supplier's lien arising from any labor or materials furnished to the Premises by or on behalf of Landlord before the Execution Date.

(5) **No Other Tenants.** Tenant is the only lessee of the Court Facility on the Premises. No other Person has any right to lease, use, or occupy the Court Facility on the Premises at any time.

b. **Tenant's Representations and Warranties.** Tenant represents and warrants to Landlord that the following facts and conditions exist and are true as of the Execution Date.

(1) **Due Authorization and Execution.** Tenant has full right, title, authority, and capacity to execute and perform this Lease and any other agreements and documents to which Tenant is a party and referred to or required by this Lease (collectively, the "Lease-Related Documents"); the execution and delivery of the Lease-Related Documents have been duly authorized by all requisite actions of Tenant; the Lease-Related Documents constitute valid, binding, and enforceable obligations of Tenant; and neither the execution of the Lease-Related Documents nor the consummation of the transactions they contemplate

violates any agreement (including Tenant's organizational documents), contract, or other restriction to which Tenant is a party or is bound. The warranties in this paragraph shall continue to apply in full force and effect throughout the Term as if made continuously during the Term.

(2) No Litigation. There is no existing or, to Tenant's knowledge, pending or threatened litigation, suit, action, or proceeding before any court or administrative agency affecting Tenant, any constituent entity or individual of Tenant that would, if adversely determined, materially adversely affect Tenant, this Lease, the Leasehold Estate, or Tenant's ability to develop and operate the Premises for a Court Facility.

(3) No Pending Construction or Liens. No Person has the right to claim any mechanic's or supplier's lien arising from any labor or materials furnished to the Premises by or on behalf of Tenant before the Execution Date.

13. **Landlord's Transfers**

a. Landlord's Right to Convey. Landlord may Transfer the Fee Estate from time to time provided that: (i) such transaction and the resulting ownership of Landlord do not otherwise violate this Lease and (ii) Landlord promptly Notifies Tenant of such Transfer.

b. Release of Landlord. Upon any Transfer of the entire Fee Estate in compliance with this Lease, the grantor shall be automatically freed and relieved from all liability (excluding liability previously accrued) for performance of any covenants or obligations to be performed by Landlord after the Transfer.

14. **Tenant's Transfers**

Tenant may not Transfer this Lease or the Leasehold Estate without Landlord's consent. No Transfer by Tenant shall release Tenant from any of its obligations or liabilities under this Lease.

15. **Subleases.** Tenant may not enter into any sublease without Landlord's consent.

16. **Leasehold Mortgages.** Tenant has no right to encumber leasehold.

17. **Equipment Liens.**

a. Tenant's Rights. If at any time or from time to time Tenant desires to enter into or grant any Equipment Lien that otherwise complies with this Lease, and provided that no uncured Event of Default exists, then upon Tenant's request Landlord shall enter into such customary documentation regarding the Financed FF&E as Tenant reasonably requests, providing for matters such as: (1) waiver of any right to take possession of such Financed FF&E upon an Event of Default; (2) waiver of any other right, title, or interest in the Financed FF&E; and (3) agreements to enable the holder of such Equipment Lien to enter the Premises and repossess such Financed FF&E if such holder exercises remedies under its Equipment Lien.

b. Required Provisions for Equipment Liens. If Tenant enters into any Equipment Lien, then Tenant shall: (1) not file (or cause or permit to be filed) such Equipment Lien as a lien against the Premises or

any part of the Premises (except the Financed FF&E); and (2) cause to be inserted in the documents for such Equipment Lien a provision to the following effect:

Notwithstanding anything to the contrary herein, this chattel mortgage, conditional sales agreement, title retention agreement, or security agreement shall not create or be filed as a lien against the Fee Estate.

**18. Quiet Enjoyment; Title to Certain Premises; Certain Agreements**

a. **Quiet Enjoyment.** So long as this Lease has not been terminated, Landlord covenants that Tenant shall and may peaceably and quietly have, hold, and enjoy the Premises for the Term, subject to the terms of this Lease, without molestation, hindrance, or disturbance by or from Landlord or anyone claiming by or through Landlord or having title to the Premises paramount to Landlord, and free of any encumbrance created or suffered by Landlord, except Permitted Exceptions.

b. **Access and Inspection.** Notwithstanding anything to the contrary in this Lease, Landlord and its agents, representatives, and designees may enter the Premises upon reasonable Notice during regular business hours, solely to: (1) ascertain whether Tenant is complying with this Lease; (2) cure Tenant's Defaults; (3) inspect the Premises and any Substantial Alteration of the Premises; (4) perform such tests, borings, and other analyses as Landlord determines may be necessary or appropriate relating to (non)compliance with any Law or possible Hazardous Substances Discharge; or (5) show the Premises to a prospective Transferee. In entering the Premises, Landlord and its designees shall not unreasonably interfere with operations of the Court Facility on the Premises and shall comply with Tenant's reasonable instructions. Landlord shall Indemnify Tenant against any claims arising from Landlord's entry upon the Court Facility on the Premises (except upon termination of this Lease or an Event of Default).

c. **Title.** Notwithstanding anything to the contrary in this Lease, all FF&E or other personal property of Tenant located in, on, or at the Court Facility on the Premises shall during the Term be owned by, and belong to, Tenant. All benefits and burdens of ownership of the foregoing, including title, depreciation, tax credits, and all other tax items, shall be and remain in Tenant during the Term.

**19. Events of Default; Remedies**

a. **Definition of "Event of Default."** An "Event of Default" means the occurrence of any one or more of the following:

(1) **Monetary Default.** If a Monetary Default occurs and continues for 30 days after Notice from Landlord, specifying in reasonable detail the amount of money not paid and the nature and calculation of each such payment.

(2) **Prohibited Liens.** If Tenant fails to comply with any obligation regarding Prohibited Liens and does not remedy such failure within 15 business days after Notice from Landlord.

(3) **Bankruptcy or Insolvency.** If Tenant ceases to pay its debts as they become due or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within 180 days after

commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of Tenant's assets or Tenant's interest in this Lease (unless such appointment, attachment, execution, or other seizure was involuntary and is contested with diligence and continuity and vacated and discharged within 180 days).

(4) Nonmonetary Default. If any other Nonmonetary Default occurs and Tenant does not cure it within 30 days after Notice from Landlord describing it in reasonable detail, or, in the case of a Nonmonetary Default that cannot with due diligence be cured within 30 days from such Notice, if Tenant shall not (x) within 30 days from Landlord's Notice advise Landlord of Tenant's intention to take all reasonable steps to cure such Nonmonetary Default; (y) duly commence such cure within such period, and then diligently prosecute such cure to completion; and (z) complete such cure within a reasonable time under the circumstances (not necessarily limited to 30 days).

b. Remedies. If an Event of Default occurs and has not been cured, then Landlord for so long as such Event of Default continues shall, at Landlord's option, have any or all of the following remedies, all cumulative (so exercise of one remedy shall not preclude exercise of another remedy), in addition to such other remedies as may be available at law or in equity or under any other terms of this Lease. Landlord's remedies include:

(1) Termination of Tenant's Rights. Landlord may upon not less than thirty (30) days' Notice following the Event of Default (which Notice is additional to Notice initiating the Event of Default, but may be concurrent with or satisfied by Notice pursuant to legal process) terminate Tenant's right to possess the Premises by any lawful means, in which case this Lease and the Term shall terminate, such date of termination shall be the Expiration Date, and Tenant shall immediately surrender possession to Landlord.

(2) Taking Possession. Landlord may upon not less than Thirty (30) days' Notice following the Event of Default (which Notice is additional to Notice initiating the Event of Default, but may be concurrent with or satisfied by Notice pursuant to legal process) re-enter and take possession of the Premises with process of law, whether by summary proceedings or otherwise, and remove Tenant, with or without having terminated this Lease, and without thereby being liable for damages or guilty of trespass. This is intended to constitute an express right of re-entry by Landlord. Except as expressly provided in this Lease or prohibited by Law, Tenant, for and on behalf of itself and all persons claiming by, through or under Tenant, expressly waives any right to service of notice of intention to re-enter provided in any Law and any and all right of redemption provided by any Law, or re-entry or repossession or to restore the operation of this Lease if Tenant is dispossessed by a judgment or by warrant of any court or judge or in case of re-entry or repossession by Landlord or any expiration or termination of this Lease. No re-entry by Landlord, whether had or taken under summary proceedings or otherwise, shall absolve or discharge Tenant from liability under this Lease. The terms "enter," "re-enter," "entry," and "re-entry," as used in this Lease, are not restricted to their technical legal meanings.

(3) Suits Before Expiration Date. Landlord may sue for damages from time to time at Landlord's election.

(4) Receipt of Moneys. No receipt of money by Landlord from Tenant after termination of this Lease, or after the giving of any notice of termination of this Lease, shall reinstate, continue, or extend this Lease or affect any notice theretofore given to Tenant, or waive Landlord's right to recover possession by proper remedy, except as this Lease expressly states otherwise, it being agreed that after service of notice to terminate this Lease or the commencement of suit or summary proceedings, or after final order or judgment for possession, Landlord may demand, receive, and collect any moneys due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of use and occupation or, at Landlord's election, on account of Tenant's liability.

(5) No Waiver. No failure by Landlord to insist upon strict performance of any covenant, agreement, term, or condition of this Lease or to exercise any right or remedy upon a Default shall waive any such Default or such covenant, agreement, term, or condition. No covenant, agreement, term, or condition of this Lease to be performed or complied with by Tenant, and no Default, shall be modified except by a written instrument executed by Landlord. No waiver of any Default shall modify this Lease. Each and every covenant, agreement, term, and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent Default of such covenant, agreement, term or condition of this Lease.

(6) Security Devices. To the extent permitted by Laws and only when Landlord has taken possession pursuant to the terms hereof Landlord may change the locks and other security devices providing admittance to the Premises.

(7) Damages. Landlord may recover from Tenant all damages Landlord incurs by reason of Tenant's Default, including reasonable costs of recovering possession, reletting the Premises, and any and all other damages legally recoverable by Landlord, and reimbursement of Landlord's reasonable out of pocket costs, including Legal Costs and bank fees for dishonored checks. Notwithstanding any Law to the contrary, Landlord need not commence separate actions to enforce Tenant's obligations for each month's accrual of damages for Tenant's Default, but may bring and prosecute a single combined action for all such and damages; and Landlord may not recover any consequential damages for Tenant's Default.

(8) Injunction of Breaches. Whether or not an Event of Default has occurred, Landlord may obtain a court order enjoining Tenant from continuing any Default or from committing any threatened Default. Tenant specifically and expressly acknowledges that damages would not constitute an adequate remedy for any Nonmonetary Default.

(9) Continue Lease. Landlord may at Landlord's option maintain Tenant's right to possession. In that case, this Lease shall continue and Landlord may continue to enforce it.

c. Proceeds of Reletting. Landlord shall apply any proceeds of any reletting as follows, without duplication, but including Default Interest on all such sums:

(1) Landlord's External Costs. First, to pay to itself the cost and expense of terminating this Lease, re-entering, retaking, repossessing, repairing, performing any construction, and the cost and expense of

removing all persons and property therefrom, including in such costs reasonable and customary brokerage commissions and Legal Costs;

(2) Preparation for Reletting. Second, to pay to itself the cost and expense reasonably sustained in securing any new tenants and other occupants, including in such costs all brokerage commissions, Legal Costs, and any other reasonable costs of preparing the Premises for reletting;

(3) Costs of Maintenance and Operation. Third, to the extent that Landlord shall maintain and operate the Premises, to pay to itself the reasonable cost and expense of doing so; and

(4) Residue. Fourth, to pay to itself any balance remaining on account of Tenant's liability to Landlord.

d. Exculpation; Landlord's Sole and Exclusive Remedies. Notwithstanding anything to the contrary in this Lease, Landlord's right to terminate this Lease and re-enter the Premises and take possession of the Premises (and collect damages from Tenant, but only to the extent of Tenant's interest in the Premises) shall constitute Landlord's sole and exclusive remedies for any Default or Event of Default. Landlord expressly waives, releases, and relinquishes any and all right to recover damages or any other sum, or have any other remedy against Tenant, except to the extent of Tenant's interest in the Premises.

e. Tenant's Late Payments; Late Charges. If Tenant fails to make any payment to Landlord required payments under this Lease within ten (10) days after such payment is first due and payable, then in addition to any other remedies of Landlord, and without reducing or adversely affecting any of Landlord's other rights and remedies, Tenant shall pay Landlord within ten (10) days after demand Default Interest on such late payment, beginning on the date such payment was first due and payable and continuing until the date when Tenant actually makes such payment. In addition, and without limiting any other rights or remedies of Landlord, Tenant shall pay Landlord an administrative charge equal to two percent (2%) of any payment that Tenant fails to pay within fifteen (15) days after such payment is first due and payable. Such administrative charge is intended to compensate Landlord for the inconvenience and staff time incurred by Landlord to handle the late or missed payment, shall not be deemed a penalty or compensation for use of funds, and shall not be credited against any other obligations of Tenant under this Lease. Notwithstanding the grace periods provided above, if Landlord gives two (2) Notices of Monetary Default in any 12-month period, then for any further Monetary Default during the balance of such 12-month period the administrative charge described above shall be due immediately upon such Monetary Default and Default Interest shall run from the date of such Monetary Default.

f. Landlord's Right to Cure. If Tenant at any time fails to make any payment or take any action this Lease requires, then Landlord, after five (5) Business Days' Notice to Tenant, or in an emergency with such notice (if any) as is reasonably practicable under the circumstances, and without waiving or releasing Tenant from any obligation or Default and without waiving Landlord's right to take such action as this Lease may permit as a result of such Default, may (but need not) make such payment or take such action. Tenant shall reimburse Landlord for an amount equal to (1) all reasonable sums paid, and reasonable costs and expenses (including Legal Costs) incurred, by Landlord in exercising its cure rights under this paragraph; and (2) Default Interest on "(1)".

g. **Holding Over.** If for any reason or no reason Tenant remains in the Premises after the Expiration Date, then Landlord will suffer injury that is substantial, difficult, or impossible to measure accurately. Therefore, if Tenant remains in the Premises after the Expiration Date, for any reason or no reason, then in addition to any other rights or remedies of Landlord, Tenant shall pay to Landlord, as liquidated damages and not as a penalty, for each month (prorated daily for partial months) during which Tenant holds over after the Expiration Date, a sum equal to three (3) times the additional payments by Tenant, as set forth in Section 4, payable under this Lease during the year preceding the Expiration Date.

h. **Waivers.** LANDLORD AND TENANT IRREVOCABLY WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, COUNTERCLAIM, OR OTHER LITIGATION ARISING OUT OF OR RELATING TO THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT REGARDING THE PREMISES, ENFORCEMENT OF THIS LEASE, TENANT'S USE OR OCCUPANCY OF THE PREMISES, ANY CLAIM OF INJURY OR DAMAGE ARISING BETWEEN LANDLORD AND TENANT, OR ANY ACTIONS OF LANDLORD IN CONNECTION WITH OR RELATING TO THE ENFORCEMENT OF THIS LEASE. TENANT WAIVES ANY RIGHT OF REDEMPTION PROVIDED FOR BY LAW. TENANT WAIVES ANY RIGHT TO INTERPOSE ANY COUNTERCLAIM IN ANY ACTION BY LANDLORD TO ENFORCE THIS LEASE OR LANDLORD'S RIGHTS AND REMEDIES UNDER THIS LEASE.

i. **Accord and Satisfaction; Partial Payments.** No payment by Tenant or receipt by Landlord of a lesser amount than the amount owed under this Lease shall be deemed to be other than a part payment on account by Tenant. Any endorsement or statement on any check or letter accompanying any check or payment of Rent shall not be deemed an accord or satisfaction. Landlord may accept any such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy.

j. **Miscellaneous.** Landlord and Tenant further agree as follows with respect to any Defaults and Landlord's rights and remedies.

(1) **Survival.** No termination of this Lease and no taking possession of or reletting the Premises shall relieve Tenant of its liabilities and obligations hereunder, all of which shall survive such expiration, termination, repossession, or reletting, but subject to any limitations on personal liability or recourse in this Lease.

(2) **Multiple Suits.** Landlord may sue to recover damages, or sum(s) equal to any installment(s) of Rent payable by Tenant, from time to time at Landlord's election. Nothing in this Lease requires Landlord to await the date when this Lease or the Term would have expired absent an Event of Default and a resulting termination of this Lease.

(3) **Receipt of Monies.** Unless such payment shall fully cure all Monetary Defaults, no receipt of moneys by Landlord from Tenant after the giving of a termination notice or a notice to obtain possession, or after the retaking of possession by Landlord as aforesaid, shall reinstate, continue, or extend the Term or affect any notice previously given to Tenant or waive Landlord's right to recover possession of the Premises. After the service of any such notice, or commencement of any suit or summary proceedings, or



after a final order or judgment for possession of the Premises, Landlord may demand, receive, and collect any moneys due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit, or judgment, unless such payments fully cure all Monetary Defaults. Any sums so collected (without thereby curing all Monetary Defaults) shall instead be deemed payments on account of use and occupation of the Premises or, at Landlord's election, to have been made on account of Tenant's liability under this Lease.

k. **Landlord Default.** If Landlord breaches or fails to perform or observe any term, condition, covenant or requirement of this Lease to be performed or observed by Landlord, and such breach or failure shall continue for thirty (30) days after written Notice from Tenant to Landlord of such breach or failure, Landlord shall be in default and Tenant shall have all remedies available to it at law or in equity (including the right to seek injunctive relief under those circumstances where injunctive relief is recognized as a valid equitable remedy), provided that only 24 hours' Notice shall be required in the case of a breach that poses the imminent threat of damage to persons or property. If the nature of any Nonmonetary Default by Landlord is such that the same cannot reasonably be cured within a thirty (30) day period, and if within thirty (30) days after Tenant's Notice, Landlord shall advise Tenant of Landlord's intention to take all reasonable steps to cure such Nonmonetary Default, then Landlord shall not be considered to be in default so long as Landlord shall commence to cure within such 30 days and thereafter diligently pursue such cure to completion and complete such cure within a reasonable time under the circumstances (not necessarily limited to 30 days). In the event that Landlord fails to cure within the time period described above, Tenant may effect such cure, in which event, Landlord shall reimburse Tenant's reasonable expenses, plus interest thereon at the Default Rate, payable promptly upon Landlord's receipt of Tenant's demand therefor. If Landlord fails to reimburse Tenant for any sums owed to Tenant under this Lease within thirty (30) days after Landlord's receipt of Tenant's written demand therefor (and accompanying documentation), Tenant may, in addition to any remedies available to Tenant at law by reason of Landlord's breach, offset the amount of such sum against Tenant's CAM payments required by this Lease.

20. **End of Term**

Upon any Expiration Date: (a) all Improvements and Building Equipment shall become Landlord's property; (b) Tenant shall deliver to Landlord possession of the Premises in good condition, reasonable wear and tear excepted, subject to any Loss that this Lease does not require Tenant to Restore; (c) Tenant shall surrender any right, title, or interest in and to the Premises and deliver such evidence and confirmation thereof as Landlord reasonably requires; (d) Tenant shall deliver the Premises free and clear of all: (i) Subleases, and (ii) liens except (1) Permitted Exceptions and (2) liens that Landlord or any of its agents caused; (e) Tenant shall assign to Landlord, without recourse, and give Landlord copies or originals of, all assignable licenses, permits, contracts, warranties, and guarantees then in effect for the Premises; (f) the parties shall cooperate to achieve an orderly transition of operations from Tenant to Landlord without interruption, including delivery of such books and records (or copies thereof) as Landlord reasonably requires; (g) the parties shall adjust for all expenses and income of the Premises and any prepaid CAM and shall make such payments as shall be appropriate on account of such adjustment in the same manner as for a sale of the Premises (but any sums otherwise payable to Tenant shall first be

applied to cure any Default); (h) Tenant shall assign to Landlord, and Landlord shall reimburse Tenant for, all utility and other service provider deposits for the Premises. Notwithstanding anything to the contrary in this paragraph, Tenant may remove from the Premises any FF&E that Tenant acquired after the Commencement Date, but Tenant must do so, if at all, before or within 90 days after the Expiration Date. During such 90-day period: Tenant may enter the Premises for such purposes, without being deemed a holdover; Landlord shall have no obligation to preserve or protect such FF&E; and in entering the Premises, Tenant shall comply with Landlord's reasonable instructions. Tenant's FF&E not removed within 90 days after the Expiration Date shall be deemed abandoned.

21. **Notices**

All Notices shall be in writing and addressed to Landlord and Tenant (and their designated copy recipients) as set forth in Exhibit C. Notices (including any required copies as set forth in Exhibit C) shall be delivered by Federal Express or other overnight (one-night) courier service to the addresses set forth in Exhibit C, in which case they shall be deemed delivered on the date of delivery (or when delivery has been attempted twice, as evidenced by the written report of the courier service) to such address(es). Notwithstanding the foregoing, Notices for the regular payment of Rent under this Lease (as opposed to late payments, for example) may be sent by first class mail, in which case they shall be deemed delivered three Business Days after deposit in the United States mail, provided that no postal strike (or other event likely to disrupt postal service) is then in effect. Either party may change its address by Notice in compliance with this Lease. Notice of such a change shall be effective only upon receipt. Any party giving a Notice may request the recipient to acknowledge receipt of such Notice. The recipient shall promptly comply with any such request, but failure to do so shall not limit the effectiveness of any Notice. Any attorney may give any Notice on behalf of its client.

22. **No Broker**

Each party: (a) represents and warrants that it did not engage or deal with any broker or finder in connection with this Lease and no person is entitled to any commission or finder's fee on account of any agreement or arrangement made by such party; and (b) shall indemnify the other party against any breach of such representation.

23. **Additional Deliveries; Third Parties**

- a. Further Assurances. Each party shall execute and deliver such further documents, and perform such further acts, as may be reasonably necessary to achieve the parties' intent in entering into this Lease.
- b. Modification. Any Modification of this Lease must be in writing signed by the party to be bound.
- c. Successors and Assigns. This Lease shall bind and benefit Landlord and Tenant and their successors and assigns, but this shall not limit or supersede any Transfer restrictions. Nothing in this Lease confers on any Person (except Landlord, Tenant) any right to insist upon, or to enforce against Landlord or Tenant, the performance or observance by either party of its obligations under this Lease.

24. **Miscellaneous**

- a. **Costs and Expenses; Legal Costs.** In the event of any litigation or dispute (except an Arbitration) between the parties, or claim made by either party against the other, arising from this Lease or the landlord-tenant relationship under this Lease, or Landlord's enforcement of this Lease upon a Default, or to enforce or interpret this Lease or seek declaratory or injunctive relief in connection with this Lease, or to exercise any right or remedy under or arising from this Lease, or to regain or attempt to regain possession of the Premises or terminate this Lease, or in any Bankruptcy Proceeding affecting the other party to this Lease, the prevailing party shall be entitled to reimbursement of its Legal Costs with Default Interest and all other reasonable costs and expenses incurred in enforcing this Lease or curing the other party's default. If either party requests any amendment or modification to this Lease, then such party shall reimburse the other party's Legal Costs incurred in considering, reviewing, and otherwise processing such request.
- b. **No Consequential Damages.** Whenever either party may seek or claim damages against the other party (whether by reason of a breach of this Lease by such party, in enforcement of any indemnity obligation, for misrepresentation or breach of warranty, or otherwise), neither Landlord nor Tenant shall seek, nor shall there be awarded or granted by any court, arbitrator, or other adjudicator, any speculative, consequential, collateral, special, punitive, or indirect damages, whether such breach shall be willful, knowing, intentional, deliberate, or otherwise. The parties intend that any damages awarded to either party shall be limited to (1) actual, direct damages sustained by the aggrieved party and (2) damages which are the direct foreseeable result of the wrongdoing of the other party. Neither party shall be liable for any loss of profits suffered or claimed to have been suffered by the other.
- c. **No Waiver by Silence.** Failure of either party to complain of any act or omission on the part of the other party shall not be deemed a waiver by the noncomplaining party of any of its rights under this Lease. No waiver by either party at any time, express or implied, of any breach of this Lease shall waive such breach or any other breach.
- d. **Performance under Protest.** If a dispute arises about performance of any obligation under this Lease, the party against which such obligation is asserted shall have the right to perform it under protest, which shall not be regarded as voluntary performance. A party that has performed under protest may institute appropriate proceedings to recover any amount paid or the reasonable cost of otherwise complying with any such obligation, with interest at the Prime Rate.
- e. **Survival.** All rights and obligations that by their nature are to be performed after any termination of this Lease shall survive any such termination.
- f. **Unavoidable Delay.** Each party's obligation to perform or observe any nonmonetary obligation under this Lease shall be suspended during such time as such performance or observance is prevented or delayed by Unavoidable Delay.

**25. Interpretation, Execution, and Application of Lease**

- a. Captions. The captions of this Lease are for convenience and reference only. They in no way affect this Lease.
- b. Counterparts. This Lease may be executed in counterparts.
- c. Delivery of Drafts. Neither party shall be bound by this Lease unless and until such party shall have executed and delivered at least one counterpart of this Lease. The submission of draft(s) or comment(s) on drafts shall bind neither party in any way. Such draft(s) and comment(s) shall not be considered in interpreting this Lease.
- d. Entire Agreement. This Lease contains all terms, covenants, and conditions about the Premises. The parties have no other understandings or agreements, oral or written, about the Premises or Tenant's use or occupancy of, or any interest of Tenant in, the Premises.
- e. Governing Law. This Lease, its interpretation and performance, the relationship between the parties, and any disputes arising from or relating to any of the foregoing, shall be governed, construed, interpreted, and regulated under the laws of the State, without regard to principles of conflict of laws.
- f. Partial Invalidity. If any term or provision of this Lease or its application to any party or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Lease, or the application of such term or provision to persons or circumstances except those as to which it is invalid or unenforceable, shall not be affected by such invalidity. All remaining provisions of this Lease shall be valid and be enforced to the fullest extent Law allows.
- g. Principles of Interpretation. No inference in favor of or against any party shall be drawn from the fact that such party has drafted any part of this Lease. The parties have both participated substantially in its negotiation, drafting, and revision, with advice from counsel and other advisers. A term defined in the singular may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which also govern all other language in this Lease. The words "include" and "including" shall be construed to be followed by the words: "without limitation." Each of these terms shall be interpreted as if followed by the words "(or any part of it)" except where the context clearly requires otherwise: Building Equipment; FF&E; Fee Estate; Improvements; Leasehold Estate; Premises; Structure; and any other similar collective noun. Every reference to any document, including this Lease, refers to such document as Modified from time to time (except, at Landlord's option, any Modification that violates this Lease), and includes all exhibits, schedules, and riders to such document. The word "or" includes the word "and."
- h. Reasonableness. Wherever this Lease states that a party shall not unreasonably withhold approval: (1) such approval shall not be unreasonably delayed or conditioned; (2) no withholding of approval shall be deemed reasonable unless withheld by Notice specifying reasonable grounds, in reasonable detail, for such withholding, and indicating specific reasonable changes in the proposal under consideration that would make it acceptable; (3) if a party grants its consent (or fails to object) to any

matter, this shall not waive its rights to require such consent for any further or similar matter; and (4) any dispute on the withholding or delay of consent shall be determined by Arbitration.

26. **Security.** Landlord and Tenant shall cooperate in coordinating Landlord's and Tenant's respective security services and infrastructure, including but not limited to endeavoring to maintain compatible security and sprinkler alarm systems and permitting the security and sprinkler alarm system of each to have access to appropriate elements of the security monitoring data of the other.

[Signatures on Next Page.]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the Execution Date.

LANDLORD:

CITY OF BLOOMINGTON

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

Its Mayor

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

Its Manager

Reviewed and approved by the City Attorney.

\_\_\_\_\_

City Attorney

:

TENANT:

**APPROVED AS TO FORM**

By: \_\_\_\_\_  
Assistant County Attorney

Date: \_\_\_\_\_

**COUNTY OF HENNEPIN**

By: \_\_\_\_\_  
Chair of its County Board

Date: \_\_\_\_\_

By: \_\_\_\_\_  
County Administrator

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Assistant County Administrator,  
Public Works

Date: \_\_\_\_\_

**ATTEST**

By: \_\_\_\_\_  
Deputy/Clerk of the County Board

Date: \_\_\_\_\_

**RECOMMENDED FOR APPROVAL**

By: \_\_\_\_\_  
Department Director,  
Community Works

Date: \_\_\_\_\_

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**EXHIBIT A**

**PROPERTY**

**DEPICTION OF COURT FACILITY AND CITY OFFICES**

